REMARKS

Claims 21-32 and 34 were pending in the application and all were rejected. Claims 22, 25, 28, 29, 30, 32, and 34 have been amended. Support for the claim amendments can be found in Applicant's disclosure as published in United States Patent Publication No. 2006/0168104, specifically at figure 14 and paragraphs [0026], [0029], [0036] through [0038], and [0199]. Applicant respectfully requests reconsideration.

CLAIM REJECTIONS UNDER 35 USC §103

The Office Action rejected claims 22, 24, 29-32, and 34 under 35 USC 103(a), as being unpatentable over Monteiro et al. (6,434,622) in view of Patrick et al. (US 5,790,541), in further view of Hudson et al. (US 20030204613), and in further view of Shibata et al. (US 2001/0018772). Applicant respectfully traverses the rejection.

The patent statute requires that the claims be considered as a whole. See 35 U.S.C. §103. The Examiner has violated the mandate of the statute by dissecting the claims into individual parts and then using them for a hindsight guided tour of the prior art, ignoring parts of the prior art that teach away from the claimed invention. Therefore, the rejection should be withdrawn.

Claim 22 has been amended to clarify that the list of client destinations comprises clients constructing a wide area group with each client having received the source packets referring to source packet distribution data or a list of preallocated copy destinations, which is

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received together with source packets. Support for this amendment is found in paragraph [0029] of the specification as published in US Pub. No.2006/01681040A1. Claim 22, as amended, is not unpatentable over the cited references because the cited references do not teach or suggest the claim limitation added by amendment.

Moreover, the combination of cited references does not teach or suggest the following claim limitations:

a) a first network connected to a second network, wherein clients in the second network are grouped into clients groups that are connected to the second network through lines different in communication capacity;

b) an updatable list of client destinations comprising group identifiers for identifying which clients belong to which client group;

c) wherein the server adds and removes clients from the updatable list responsive to the clients joining or leaving their respective client group; and

d) wherein the server transmits the packets to the first network for transmission to an intermediate node in the second network so that the intermediate node distributes copies of the received packets to the other clients in the client group.

The Examiner states that he is not persuaded by the argument that Hudson does not teach the topography of the claims. A prior patent must be considered **in its entirety**, i.e., as a whole, including portions that would lead away from the invention in suit. *W. L. Gore & Assoc., Inc. v. Garlock, Inc.*, 721 F.2d 1540, 1550, 220 USPQ 303, 311 (Fed. Cir. 1983), *cert. denied* 469 U.S. 851 (1984). Therefore, Hudson does teach away from the claimed invention and

should not be considered as prior art. The Examiner cannot ignore such teachings merely

because it suits his conclusion.

Applicant argued that Monteiro does not teach or suggest "dynamically selecting one

client destination, from the updatable list of client destinations, wherein the client destination

serves as an intermediate node for the selected client group, by use of the receipt notices"

Rather Monteiro teaches away from the claimed concept by saying "**all Users** within the global

group eventually receive a copy of the packet.[emphasis added]" That is the opposite of a

transmission to a selected group. The Examiner completely missed the point here that the media

server cannot be an intermediate server for this reason. In *W. L. Gore & Assoc., Inc. v. Garlock,*

Inc., supra, the district court erred in not taking into account the import of the markedly different

behavior of PTFE from that of conventional thermoplastic polymers clearly established and

undisputed on the record, and in thus disregarding the unpredictability and unique nature of the

unsintered PTFE to which the claimed inventions relate, *In re Whiton,* 420 F.2d 1082, 164

USPQ 455 (CCPA 1970); in considering claims in less than their entireties; and in considering

the references in less than their entireties, i.e., in **disregarding** disclosures in the references that

diverge from and teach away from the invention at hand.

The Office Action cites Monteiro for teaching "dynamically allocating, by use of the

updatable list, the destinations to the network to which the packets of minimum unit are

transmitted" at Col. 6, lines 2-6: "Thus the distribution architecture implements a form of

multicast packet delivery to a group. The group in this case is the set of all Users who are

listening to a given channel at a given time. Group membership is dynamic, Users can start and

stop listening to a channel at any time."

Monteiro's multicasting apparatus does not require an updatable *list* of client destinations. Instead, because Monteiro does not have such a list, Monteiro must verify "the operational status of the user's access to the communications network during delivery of the real-information" as recited in claim 1 of Monteiro. Monteiro does not refer to the list required by claim 22 and in fact Monteiro discusses the scenario wherein users are able to start and stop listening to channels at any given time and yet there is no list tracking the users. Monteiro at Col. 6, lines 1-5: "Thus the distribution architecture implements a form of multicast packet delivery to a group. The group in this case is the set of all Users who are listening to a given channel at a given time. Group membership is dynamic, Users can start and stop listening to a channel at any time."

Further, the independent claims have been amended to require that copies of the packet be distributed by the intermediate node. None of the cited references teach or suggest transmitting the packets to an intermediate node, NOT to all of the clients in a group. Instead, the claims at issue require that the intermediate node distribute **copies** of the packets to the other members of the group. Monteiro does just the opposite. See Monteiro at Col. 16, lines 49-57: 'In FIGS. 16A and 16B depict how the Media Server requests distribution of an audio channel from another Media Server or from a Primary Server. This sequence is much the same as that in which a User requests the distribution of audio information from a Media Server. Note that a Media Server receives a single incoming stream for each channel that it is carrying and will then redistribute this stream to **all Users** or other Media Servers that request it.[emphasis added]"

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Patrick teaches away from the distribution of copies. Refer to Patrick at Col. 10, line 19 – Col. 12, line 57: "Continuing to refer to FIG. 8, the secondary nodes 340a, 340b, and 340c (such as secondary stations 110) forward packets from the corresponding secondary MAC networks 320, 321, and 322 to the primary node 350 (such as primary station 101), provided those packets have a protocol field which indicates that they are of the desired internetworking (or ancillary) protocols. For example, a secondary node connected to an Ethernet secondary MAC would forward only Ethernet packets with a type code of hex 0800 (for IP) and hex 0806 (for the ancillary arp protocol). The secondary nodes also should be capable of recognizing different encapsulations of protocols on the secondary MAC networks. For example, they must recognize both the Type encapsulation of Ethernet as mentioned above and the Sub Network Access Protocol (SNAP) encapsulation of IP and ARP in Ethernet, as described in the Internet Society's Request for Comments (RFC) 1042.

Further, for an Ethernet secondary MAC, the secondary node only needs to examine for forwarding those Ethernet frames that contain the secondary node's Ethernet MAC address MS2T, the Ethernet broadcast address, and Ethernet multicast addresses if the secondary node is part of a multicast group. The primary node recognizes internet-work protocol transmissions from the terminals and builds an association between a terminal sender's internetwork host address and the secondary node which forwarded the packet. It forwards internetwork packets from terminals to "other" internetwork hosts as a router typically operates." In the final office action, the examiner argues that this is not relevant (i.e., ignores the teaching away) because Monteiro teaches this property. See Final Office Action at page 3. This is a legal error that

requires a modification of the conclusion. Findings that "rest on an erroneous view of the law may be set aside on that basis", *Pullman-Standard v. Swint*, 456 U.S. 273, 102 S.Ct. 1781, 42 L.Ed.2d 66 (1982).

The Office Action concedes that Monteiro and Patrick "do not explicitly disclose 'a first network that is connected to the second network through lines different in communication capacity' but alleges that Hudson provides this requirement at paragraph [0030]: "… Finally, the end-user client node tier is typically a highly heterogenous collection of typically independently operated computer systems, each used to host a segment storage cache and to participate on an ad-hoc basis in the content distribution network. Client node systems may support caches of varying size, network connections of varying capacity, and be available on independent schedules." Applicant respectfully disagrees. Hudson does not teach the required topography of the claims wherein a server is connected to a first network; the first network is connected to a second network; and clients in the second network are grouped into client groups and these client groups are connected to the second network through lines different in communication capacity.

Again the Final Office Action sheds some light on the Examiner's error by arguing that Monteiro teaches a dynamic updatable list. A closer examination of the actual teachings of Monteiro reveals that the distribution of Monteiro is far from being selective "such that all Users within the global group eventually receive a copy of the packet." See Monteiro at col. 6, lines 40-44.

With regard to claim 24, Monteiro does not teach 'dynamically updating the

updatable list in association with a change of a construction of the second network.' Monteiro at Col. 12, lines 12-31 discusses "automatic updating of User software," not the dynamic updating of a client destination list.

With regard to claim 29, it is not unpatentable over the cited references because it is a machine counterpart to claim 22 and contains limitations not taught by the cited references. Likewise, claims 30, 32, and 34 have been amended with claim limitations similar to those found in claim 22; therefore they are not unpatentable over the cited references for at least the same reasons that claim 22 is not unpatentable.

The Office Action rejected claim 23 under 35 USC 103(a) as being unpatentable over Monteiro, Patrick, Hudson, and Shibata as applied to claim 22 above, and further in view of Motles (US 5095444). Claim 23 is not unpatentable over the cited references by virtue of its dependence on claim 22.

The Office Action rejected claims 25 and 27-28 under 35 USC 103(a) as being unpatentable over Monteiro, Patrick, and Shibata. Claim 25 is a counterpart to claim 22 and contains limitations similar to those of claim 22, specifically claim 25 requires: a) wherein the clients in the second network are grouped into client groups that are mutually connected to the second network through lines different in communication capacity; and b) a central processor unit configured for distributing to other clients within the client group in the second network copies of the packets. Claims 27 and 28 are patentable over the cited references at least by virtue of their dependence on claim 25.

The Office Action rejected claim 26 under 35 USC 103(a) as being unpatentable

over Monteiro, Patrick, Shibata, as applied to claim 25 above, and further in view of Motles.

Claim 26 is patentable over the cited references at least by virtue of its dependence on claim 25.

CONCLUSION

For the foregoing reasons, Applicant respectfully requests allowance of the pending claims. The Director is hereby authorized to charge any fees which may be required, or credit any overpayment, to Deposit Account Number 50-0510.

Respectfully submitted,

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